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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

HA

MAR 23 2004

FILE:

Office: MOSCOW, RUSSIA

Date:

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Moscow, Russia, on September 27, 2001. An appeal was dismissed by the Administrative Appeals Office (AAO) on May 14, 2003. The AAO order was affirmed on October 24, 2003, subsequent to a motion to reopen and reconsider. The matter is now before the AAO on a second motion to reopen. The motion to reopen will be granted and the previous AAO decision and order, dated May 14, 2003, will be affirmed.

The applicant is a native and citizen of Russia who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude (bribery). The applicant's mother is a United States citizen, and the applicant is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

In a decision dated September 27, 2001, the officer in charge (OIC) determined the applicant had failed to establish that extreme hardship would be imposed upon his U.S. citizen mother. The waiver application was denied accordingly.

On appeal, the applicant, through counsel, asserted that he was not guilty or capable of committing the crime of moral turpitude. Counsel asserted that the applicant's conviction was "indemnified" pursuant to Russian law, and that the applicant was therefore not "convicted" for immigration purposes. Counsel additionally asserted that the applicant's mother would suffer extreme emotional and physical hardship if the applicant's waiver of inadmissibility application were not granted. The AAO found that the applicant had failed to establish that he was not "convicted" for immigration purposes. The AAO additionally found that the applicant had failed to establish that his mother would suffer extreme hardship if his waiver application were not granted. The appeal was dismissed accordingly.

In a subsequent motion to reopen and reconsider, counsel asserted that the AAO should be equitably estopped from dismissing the applicant's waiver of inadmissibility appeal due to past CIS misrepresentations regarding the location of the applicant's file, and due to the resulting high legal costs incurred by the applicant in order to locate his file. Counsel reasserted that the applicant was not "convicted" for immigration purposes, and that based on the medical evidence contained in the record, the applicant had established that his mother would suffer extreme hardship if the applicant's waiver application were denied. The AAO found that it had no authority to apply the doctrine of equitable estoppel in the applicant's case. The AAO found further that legal precedent cases clearly showed that the applicant was "convicted" for immigration purposes. The AAO additionally found that the medical documentation contained in the record failed to demonstrate that the applicant's mother would suffer extreme hardship if the applicant's waiver application were denied.

8 C.F.R. § 103.5(a) states in pertinent part:

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

....

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

In the present motion to reopen, dated November 18, 2003, counsel asserts that a new medical letter regarding the emotional and physical condition of the applicant's mother, establishes that she will suffer extreme hardship if the applicant's waiver application is denied. Counsel also submits a new affidavit from the applicant's mother reasserting that she has suffered emotional and physical hardship due to the applicant's immigration problems.

The new medical letter is dated November 7, 2003, and is signed by [REDACTED] M.D., [REDACTED] M.D. and [REDACTED] RN, MS, CNS. The AAO notes that, although the record does not contain resumes for each individual, the new medical letter briefly lists the general medical qualifications and experience that each individual possesses. The new medical letter states that the applicant's mother (Ms. [REDACTED]) has been a patient at the Harvard Vanguard Medical Association since 1995, and that since that time Ms. [REDACTED] has had "repeated attacks of cardiac palpitations, insomnia and anxiety attacks which caused her to be rushed to the hospital." The AAO notes that the medical letter does not state the number of times that the applicant has suffered medical emergencies. The letter also fails to provide the dates of the medical events referred to, and there is no independent detailed medical evidence in the record to clarify or demonstrate when and under what conditions Ms. [REDACTED] was taken to the hospital, or to demonstrate whether a medical cause was determined for Ms. [REDACTED]'s conditions at the time the events occurred.

The new medical letter states that in June of 2000, a stable medicine regime and diagnoses were established for Ms. [REDACTED]. The letter states that Ms. [REDACTED] was diagnosed with Panic Disorder with Agoraphobia, 300.01 and Major Depression, Recurrent, 296.30, and that her medicines are Paxil and Lorazepam, twice a day. The new medical letter does not state when Ms. [REDACTED] first exhibited symptoms of Panic Disorder or Major Depression. The AAO notes, however, that a previous, June 5, 2003, medical letter signed by the same medical professionals states generally that Ms. [REDACTED] has received psychiatric support at their medical facility since 1998.

The new medical letter states that Ms. [REDACTED] became "[D]isabled from work due to sadness, heart palpitations, panic attacks, poor focus and concentration". The previous June 5, 2003, letter indicated that Ms. [REDACTED] retired from her work due to her ongoing anxiety. The AAO notes, however, that Ms. [REDACTED] reached retirement age (65 years old) on October 20, 2000, and the record contains no independent evidence regarding the date or circumstances of Ms. [REDACTED] retirement, or to indicate that she retired on emotional disability grounds related to her son's immigration process. Moreover, the AAO notes that the applicant's visa petition was not denied until September 2001, a year after Ms. [REDACTED] retired.

The new medical letter states that despite the applicant's "Medicines, counseling and treatment, she has been unable to stabilize her health due to the severe stress of separation from her family in Russia." The AAO notes that the previous June 5, 2003, medical letter stated generally that Ms. [REDACTED] "Is treated with antidepressants and anti-anxiety medications, which help to reduce the symptoms." Moreover, the AAO notes that public information provided by the American Psychological Association and the National Institute of Mental Health indicates that panic disorder is highly treatable with cognitive and behavioral therapies, and with the use of anti-anxiety, anti-depressants, and sometimes heart medications. See "Answers to Your Questions About Panic Disorder", <http://www.apa.org/pubinfo/panic.html>; See also, "Understanding Panic Disorder", <http://www.nimh.nih.gov/anxiety/upd.cfm>.

The AAO notes that the new medical letter does not describe the extent to which Ms. [REDACTED] Panic Disorder and Major Depression affects her daily life. Moreover, the letter does not establish that Ms. [REDACTED] conditions are caused solely by the fact that the applicant has been unable to immigrate to the United States. The AAO additionally notes that the new medical letter also fails to establish that Ms. [REDACTED] overall physical and emotional condition would improve if the applicant were to move to the United States. Although Ms. [REDACTED] separation from the applicant is listed as a stressor in her condition,

the AAO notes that Panic disorder has been described as an often chronic and relapsing illness by the National Institute of Medical Health. See "Understanding Panic Disorder", <http://www.nimh.nih.gov/anxiety/upd.cfm>.

The record reflects that the applicant's immigrant visa petition was denied by the Officer in Charge in Moscow in 2001. The medical evidence contained in the record reflects that Ms. [REDACTED] has required medical care for her overall symptoms since at least 1995, and that she has been under psychiatric care for stress and anxiety since as early as 1998. In addition, the record reflects that Ms. [REDACTED] was diagnosed with anxiety disorder and major depression in June of 2000, a year before the 2001, denial of the applicant's immigrant visa petition.¹ Based on the evidence in the record, the AAO finds that Ms. [REDACTED] medical conditions existed prior to the denial of the applicant's immigration petition. The AAO additionally finds that the applicant has failed to establish that his mother would no longer suffer from the overall condition of Panic Disorder and Major Depression if he were in the United States. Accordingly, the applicant has failed to establish that his mother would suffer extreme hardship if his waiver of inadmissibility is not granted, and the previous order dated May 14, 2003, will be affirmed.

ORDER: The AAO order dated May 14, 2003, is affirmed.

¹ The AAO notes further that in 2000, Ms. Medvedeva's son (the applicant) was charged and convicted of the crime of bribery in Russia, and that as a result he was sentenced to a term of imprisonment in a Russian jail.